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 GUERRE; AND MIKE SMITH

10
 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

14 JAMES ALAN BUSH,
 15 Plaintiff,
 16 v.
 17 CLOUDMARK, KIM MOSS, TOM DOE
 18 1, MIKE SMITH, JAMIE DE GUERRE,
 AND DOES 2 TO 5, INCLUSIVE,
 Defendants.

19 Case No. C08 01272 PVT

20 **DEFENDANTS' REQUEST FOR
 21 JUDICIAL NOTICE IN SUPPORT OF
 MOTION TO DISMISS, OR IN THE
 22 ALTERNATIVE, FOR SUMMARY
 JUDGMENT**

23 **Date: May 27, 2008
 Time: 10:00 a.m.
 Courtroom: 5**

24 **THE HONORABLE PATRICIA V.
 TRUMBULL, MAGISTRATE JUDGE**

25 Pursuant to the Federal Rules of Evidence, Rule 201(b)(2), Defendants Cloudmark,
 26 Inc., Kim Moss, Jamie De Guerre, and Mike Smith, hereby respectfully request from this Court to
 take judicial notice of the following:

27 1. Defendant Cloudmark, Inc.'s Certificate of Incorporation filed in the state of
 28 Delaware on December 10, 2001, a true and correct copy of which is attached as Exhibit "A" to the
 Declaration of Kimberly Moss;

2. Defendant Cloudmark, Inc.'s Certificate of Qualification issued by former
 25 Secretary of State Bill Jones, a true and correct copy of which (including attachments thereto) is
 26 attached as Exhibit "B" to the Declaration of Kimberly Moss.

27 3. The fact that Plaintiff is a Caucasian male.
 28

(NO. C08 01272 PVT)
 FIRMWIDE:84638292.1 610000.1230

1 4. The fact that on March 15, 2005, Plaintiff signed a Severance Agreement and
 2 Release with respect to any claims he may have against Defendants in connection with his
 3 employment at Cloudmark, Inc. A true and correct copy of this Agreement is attached as Exhibit
 4 "C" to the Declaration of Kimberly Moss.

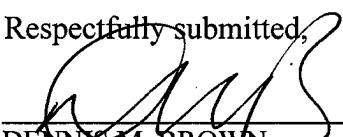
5 This Court has the authority to take judicial notice of the corporate documents set
 6 forth in paragraphs 1 and 2 of this Notice because certified public records that are kept by the
 7 Secretary of State fall directly into the category of items considered proper for judicial notice by the
 8 Court. *Grassmoeck v. Barnett*, 281 F. Supp. 2d 1227, 1232 (2003). *Accord, Alberts v. Tuft (In re*
 9 *Greater Southeast Cnty. Hosp. Corp.)*, 333 B.R. 506, 527, n. 25 (2005).

10 This Court has the authority to take judicial notice of the fact that Plaintiff is a
 11 Caucasian male, because this fact is capable of accurate and ready determination by observing
 12 Plaintiff's physical appearance when he appears in person before this Court, by reviewing relevant
 13 public records, or by observing Plaintiff on Youtube, at <http://www.youtube.com/watch?v=YiBaEmTgUi8>.

15 This Court has the authority to take judicial notice of the fact that on March 15, 2005
 16 Plaintiff signed the Severance Agreement and Release discussed in paragraph 4 of this Notice,
 17 because this fact is capable of accurate and ready determination by comparing Plaintiff's signature
 18 on the pleadings filed with this Court, with his signature on the Severance Agreement and Release.
 19 See Fed. Rules Evid., Rules 201(b)(2) and 901(b)(2).

20 Dated: April 16, 2008

21 Respectfully submitted,

22 
 23 DENNIS M. BROWN
 MARYAM S. KARSON
 LITTLER MENDELSON
 Attorneys for Defendants
 CLOUDMARK, INC.; KIM MOSS; JAMIE DE
 GUERRE; AND MIKE SMITH